

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC - 4 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of the Commission's Rules To
Establish Part 27, the Wireless
Communications Service ("WCS")

GN Docket No. 96-228

DOCKET FILE COPY ORIGINAL

**JOINT COMMENTS OF SPRINT SPECTRUM L.P. d/b/a SPRINT PCS AND
SPRINT CORPORATION**

Respectfully submitted,

For Sprint Spectrum L.P. d/b/a Sprint PCS

Jonathan M. Chambers
1801 K Street, N.W.
Suite M-112
Washington, D.C. 20006
(202) 835-3617

Cheryl A. Tritt
James A. Casey
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006
(202) 887-1500

For Sprint Corporation

Jay C. Keithley
1850 M Street, N.W.
Suite 1100
Washington, D.C. 20036
(202) 828-7453

Attorneys for Sprint Spectrum L.P. d/b/a
Sprint PCS and Sprint Corporation

Dated: December 4, 1996

No. of Copies rec'd
List ABCDE

0210

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY.....	2
II. THE COMMISSION'S WCS PROPOSAL WILL NOT PROMOTE THE MOST EFFICIENT AND INTENSIVE USE OF THE 30 MHZ OF SPECTRUM AT ISSUE	4
A. Congress Has Mandated That The Commission Establish Rules That Promote the Most Efficient and Effective Utilization of Spectrum Resources.....	4
B. To Ensure That The Market Can Effectively Determine The Efficient Use of WCS Spectrum, WCS Should Be Licensed In 5 MHz Spectrum Blocks And For Initial License Areas No Larger Than Major Trading Areas.....	5
C. WCS Must Not Undercut The Viability of Existing Wireless Services Such As PCS.....	8
III. A PORTION OF THE SPECTRUM AT ISSUE IN THIS NPRM SHOULD BE RESERVED FOR PUBLIC SAFETY USE.	10
IV. CONCLUSION.....	11

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Amendment of the Commission's Rules To
Establish Part 27, the Wireless
Communications Service ("WCS")

GN Docket No. 96-228

**JOINT COMMENTS OF SPRINT SPECTRUM L.P. d/b/a SPRINT PCS AND
SPRINT CORPORATION**

Pursuant to the Notice of Proposed Rulemaking released by the Federal Communications Commission ("FCC" or "Commission") on November 12, 1996 in the above-captioned proceeding,¹ Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS") and Sprint Corporation ("Sprint") submit the following joint comments.²

¹ See *Amendment of the Commission's Rules To Establish Part 27, the Wireless Communications Service ("WCS")*, Notice of Proposed Rulemaking, GN Docket No. 96-228, FCC 96-441 (Nov. 12, 1996) ("NPRM").

² Sprint Spectrum, L.P. is a joint venture formed by subsidiaries of Sprint Corporation, Cox Communications, Inc., Tele-Communications, Inc. and Comcast Corporation to provide wireless services. Sprint Corporation is a diversified telecommunications company providing long distance, local telephone exchange, international and, through its ownership interest in Sprint Spectrum, personal communications service ("PCS") services. Sprint Spectrum, through its affiliates, holds broadband (A and B Block) PCS licenses in 29 Major Trading Areas ("MTAs"). It also has interests in the licenses for the Philadelphia MTA, the Washington D.C.- Baltimore MTA and the Los Angeles - San Diego MTA. Sprint Spectrum's affiliate American Personal Communications currently provides PCS services in the Washington D.C.-Baltimore MTA. In addition, Sprint Corporation's subsidiary SprintCom, Inc. is an applicant in the ongoing D, E & F Block PCS auction, and currently holds the high bid for 161 licenses in 139 markets.

I. INTRODUCTION AND SUMMARY

In response to the Congressional mandate in the *Omnibus Consolidated Appropriations Act, 1997* (the “Appropriations Act”) that 30 MHz in the 2305-2320 and 2345-2360 MHz frequency bands be reallocated and licensed through competitive bidding,³ the Commission proposes the creation of a completely flexible and open-ended Wireless Communications Service (“WCS”) that could result in fewer regulations imposed on these licensees than on commercial mobile radio service (“CMRS”) providers. Licensees in this service would be allowed to provide any fixed, mobile or radiolocation service, or satellite Digital Audio Radio Services (“DARS”), consistent with the international frequency allocations for these bands.⁴ The NPRM proposes to award licenses for large service areas through competitive bidding, to adopt almost no eligibility restrictions for WCS,⁵ and to allow partitioning of licensed service areas, disaggregation of spectrum, and franchising of portions of licensed service areas or spectrum on a lease basis.⁶

Sprint PCS and Sprint support the Commission’s ongoing efforts to establish flexible, competition-driven spectrum policies and wireless service regulations. Nonetheless, the open-ended nature of the WCS proposals and a seeming Commission preference for large (perhaps nationwide) geographic licenses and large spectrum blocks, would discourage service innovation and efficient spectrum utilization, and would undercut

³ *Omnibus Consolidated Appropriations Act, 1997*, P.L. 104-208, 110 Stat. 3009, § 3001(a) (1996)(the “Appropriations Act”).

⁴ *NPRM* at ¶ 9.

⁵ WCS applicants would remain subject to the foreign ownership restrictions set out in 47 U.S.C. § 310.

⁶ In addition, the Commission seeks comment on a number of implementation issues including, the proper geographic scope for WCS licenses, the amount of spectrum for each license, how best to accommodate the needs of public safety radio services, and whether build-out requirements should be adopted.

the significant strides the Commission has made in encouraging a robust, competitive commercial mobile radio service ("CMRS") industry.

To avoid these potentially harmful results the Commission should focus its efforts on maximizing efficient use of the 30 MHz of spectrum at issue in this proceeding. Sound Commission policy dictates that market forces, rather than regulation, most efficiently drives the development of wireless services.⁷ As discussed below, however, the proposed WCS rules and auction procedures could have the unintended effect of predetermining the kinds of services offered in the newly allocated spectrum, as well as significantly limiting the type and number of entities capable of participating in any WCS auction.

To ensure that the market most efficiently determines the use of the WCS spectrum, WCS licenses should be awarded for geographic areas no larger than basic trading areas ("BTAs") and in blocks no greater than 5 MHz. In addition, the Commission should establish buildout requirements to ensure rapid deployment of services and to discourage spectrum warehousing. This approach will allow licensees to combine spectrum and service areas in the most effective manner for a planned service. Any other approach to WCS potentially could harm the nascent PCS industry; discourage innovation and service buildout, especially in rural areas; promote spectrum warehousing; and discourage or prevent participation in the industry by a broad range of competitors, including small businesses and businesses owned by women and minorities.

Moreover, because market forces may not ensure the availability of sufficient spectrum resources for public safety radio services, the reallocation of this spectrum provides the Commission with an opportunity to set aside spectrum for public safety use. Sprint PCS and Sprint suggest that at least 10 MHz be set aside in each licensed market for this purpose.

⁷ See e.g. *Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Service*, 11 FCC Rcd 8965, 8975-76 (1996).

II. THE COMMISSION'S WCS PROPOSAL WILL NOT PROMOTE THE MOST EFFICIENT AND INTENSIVE USE OF THE 30 MHZ OF SPECTRUM AT ISSUE

A. Congress Has Mandated That The Commission Establish Rules That Promote the Most Efficient and Effective Utilization of Spectrum Resources

The overriding objective of recent congressional actions regarding telecommunications and spectrum management has been the promotion of new services through the efficient and intensive use of available and reallocated spectrum resources.⁸ Legislators intended to support the creation and rapid deployment of new advanced spectrum-based services, as well as the creation of economic opportunity and the promotion of competition.⁹ The House Report for the *Omnibus Budget Reconciliation Act of 1993* explains how the Commission should achieve this objective.

[T]he Commission's regulations must promote economic opportunity and competition, and ensure that new and innovative technologies are readily accessible to the American people. The Commission will realize these goals by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women.¹⁰

In ordering the reallocation of the 30 MHz of spectrum at issue in this proceeding, Congress reconfirmed this objective, requiring that the Commission "seek to promote the most efficient use of the spectrum."¹¹ However, in the context of existing services and the

⁸ See e.g., 47 U.S.C. § 303(g)(charging the Commission generally with studying "new uses for radio" and encouraging the "larger and more effective use of radio in the public interest."); 47 U.S.C. § 309(j)(3)(D)(the design of competitive bidding mechanisms should promote "efficient and intensive use of the electromagnetic spectrum.").

⁹ See Rep. No. 111, 103rd Cong., 1 Sess. (1993), reprinted in 1993 U.S.C.C.A.N. 378 ("the House Report")

¹⁰ *Id.*

¹¹ *Appropriations Act* at § 3001(b)(1).

Congressional mandate that a wide variety of entities be able to participate in the provision of spectrum based services, the WCS service, as proposed, may actually result in inefficient, duplicative spectrum utilization, as well as the concentration of licenses in the hands of only a few large industry players.

Although the open-ended nature of the WCS proposals makes detailed comment difficult, it is apparent that the proposed large, perhaps nationwide, service areas, particularly if combined with large frequency blocks, would eliminate all but those entities with the deepest pockets from participating in any spectrum auction.¹² Many of these participants could be excluded not only because they could not raise the necessary capital to acquire a license, but because their envisioned service may be feasible only in a smaller license area. Given the undefined nature of WCS, the license assignment process would ensure more efficient use of the spectrum and a greater number of new services and products if a greater number of entities could participate in any auction by assembling only as much spectrum as they need and for only as large a service area as necessary.

B. To Ensure That The Market Can Effectively Determine The Efficient Use of WCS Spectrum, WCS Should Be Licensed In 5 MHz Spectrum Blocks And For Initial License Areas No Larger Than Major Trading Areas

In addition to limiting the participants in this new wireless service, the substantial geographic areas and large spectrum blocks proposed by the Commission will also limit the kinds of services that will be offered. The entities capable of participating in a WCS spectrum auction likely will be providers of mobile voice telephony services. Given the large number of CMRS licensees operating or about to operate in each market, there has

¹² Such an outcome would violate Congress' intention that the competitive bidding process not favor "deep pockets." *House Report* at 582. Ironically, even though a number of bidders might be excluded from participating in WCS services due to the high cost of acquiring one of only a few nationwide or regional licenses, the actual revenues from such an auction might very well be much lower than if the spectrum was auctioned in smaller frequency blocks and smaller geographic areas.

been no demonstrated need for additional mobile voice services,¹³ yet the Commission's proposal could, by default, allocate this additional spectrum for those uses. Such an outcome would not necessarily correspond with the demands of the market. Instead, that outcome would result from an unintended bias in the WCS rules and auction procedures, because of current economic and CMRS market realities, supporting CMRS-like services. The new service rules and auction procedures should take into account existing wireless market factors so that they promote efficient use of the spectrum and provide significant opportunity for the development of innovative new services, rather than merely mimicking existing services.

Sprint and Sprint PCS strongly encourage the Commission to license WCS in smaller spectrum blocks over smaller license areas. This approach will permit a greater number of participants in the auction because each entity would be able to implement a business plan based on an analysis of markets and consumer demand and the minimum amount of spectrum necessary to meet that demand.

The Commission should license WCS in 5 MHz frequency blocks for license areas no larger than BTAs. This licensing scheme will offer the greatest degree of geographic and spectrum flexibility for development of services to meet market demands. Individual licenses could be aggregated through the auction process to form a service area and spectrum block best fitted to provide a given service. If an entity determines that a nationwide license area is necessary, then it can assemble one by bidding on the appropriate licenses just as a number of PCS applicants did in the A, B and C block PCS auctions.¹⁴

¹³ Under the CMRS regulatory structure, there could potentially be eight or more (six PCS, two cellular) mobile voice service providers prior to the licensing of any WCS providers.

¹⁴ The participants in the PCS auctions have expended tremendous resources to assemble the most effective and economically advantageous markets through the acquisition of MTAs and BTAs. For the Commission to now establish nationwide WCS license areas would unreasonably discriminate against PCS providers and would violate congressionally

(Footnote continues on following page.)

In addition, a 5 MHz/BTA licensing approach will better promote innovation and rapid buildout because licensing would occur in more economically manageable segments. This could be especially true in rural areas that likely would not receive service quickly under a regional or nationwide licensing scheme due to the decreased economic incentive for serving these areas. 5 MHz licenses likely would be available in an auction at a cost that would not discourage the provision of service in rural areas. Combined with the prospect of Universal Service Fund assistance for qualifying services, this approach could create a greater incentive for providing service to rural America.

In the *Second Report and Order* in the PCS proceedings,¹⁵ the Commission determined that smaller license areas were necessary to ensure rapid buildout of PCS services. In selecting an MTA/BTA PCS license structure, the Commission noted that large license areas like MTAs were sufficiently large to allow the economies of scale that would promote more inexpensive services, but that smaller license areas, such as BTAs, would permit a larger base of participants who might not be able to afford the larger service areas, and that with more participants in the industry, there would likely be more service innovation brought on by competition.¹⁶ In addition, the Commission stated that the smaller license areas would speed buildout by minimizing start-up costs and stimulating construction in less populated areas, promoting a more ubiquitous PCS coverage, as well as

(Footnote continued from previous page)

mandated regulatory parity. See *Omnibus Budget Reconciliation Act of 1993*, P.L. 103-66, 107 Stat. 312, 393 (1993)(the "Budget Act").

¹⁵ *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 8 FCC Rcd 7700, 7733 (1993) (the "2nd R&O").

¹⁶ *Id.*

promoting more efficient spectrum utilization and discouraging spectrum warehousing.¹⁷

There is no evidence indicating that this assessment is not also true for WCS services.

C. WCS Must Not Undercut The Viability of Existing Wireless Services Such As PCS

WCS, if fashioned to mirror CMRS service but with larger license areas and fewer regulatory constraints than PCS, will hamper the viability of PCS services before they are even introduced. Existing PCS licensees and those entities now participating in the D, E & F Block auction have based their financing and business plans, as well as their auction bidding strategies, on currently available spectrum and the existing regulatory structure of the CMRS industry. These licensees thus will be unfairly competitively disadvantaged if WCS licenses are auctioned in a manner that likely would produce much lower prices for CMRS licenses than those paid by these initial licensees.¹⁸ This disadvantage will be especially acute if the Commission designates and auctions nationwide broadband licenses. The Commission must not frustrate the legitimate investment-backed expectations¹⁹ of PCS licensees.²⁰

¹⁷ The Communications Act of 1934, as amended, explicitly requires the Commission to design its competitive bidding rules to prevent stockpiling or warehousing of spectrum." 47 U.S.C. § 309(j)(4)(B).

¹⁸ C Block licensees will be particularly disadvantaged in this circumstance. Designated entities traditionally have had more difficulty raising sufficient capital for start-up and ongoing business development than other companies. The C Block licensees are only now beginning to implement their business plans and secure financing to build their systems. Given the difficulty many have had in this process, it is unlikely that they adequately could respond to the kind of wholesale shift in the competitive marketplace that the Commission's WCS proposal could produce.

¹⁹ See, generally, *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).

²⁰ Rules establishing large spectrum blocks and large license areas useable for the provision of PCS services would represent a "breach of faith" with PCS licensees who have relied on the Commission's rules in building their business plans. The Commission should not now change those rules to drastically alter the competitive playing field.

Moreover, Congress has required that any regulatory scheme for wireless services established by the Commission must address regulatory parity and the competitive relationship between wireless services.²¹ To ensure a robust wireless marketplace, similar services must be subject to similar regulatory constraints so that no service providers are granted an unfair advantage.²² An important example of the potential lack of regulatory parity in the Commission's proposals is the possible exclusion of WCS from buildout requirements.²³ In the *2nd R&O*, notwithstanding that it viewed PCS as a competitive service, the Commission found that minimum construction and service requirements were necessary to ensure that the PCS spectrum would be effectively utilized.²⁴ Construction requirements are just as necessary to avoid spectrum warehousing in the WCS context as they were for PCS services. Unless the Commission is prepared to eliminate the buildout requirements imposed on PCS licensees, it must not provide WCS licensees with such regulatory relief.

In addition to the possible elimination of buildout requirements, the Commission proposes a more relaxed regulatory structure for WCS licensees. It proposes to have no eligibility requirements for WCS,²⁵ and seeks comment on exemption of WCS spectrum from the CMRS spectrum cap, permitting "franchising," partitioning, and disaggregation of WCS licenses, and allowing WCS licensees to determine their own regulatory status.²⁶ There are a number of open proceedings regarding these issues, and the Commission should

²¹ See *Budget Act*, 107 Stat. 393.

²² See *House Report* at 259.

²³ *NPRM* at ¶ 61.

²⁴ *2nd R&O*. at 7754.

²⁵ *NPRM* at ¶ 23.

²⁶ See *id.* at ¶¶ 23-32.

complete these rulemakings before determining the appropriate level of regulatory relief for WCS to ensure equal regulatory burdens on both services. Otherwise the WCS rules will violate the Commission's regulatory parity policies and will result in an undue competitive advantage for WCS services vis-à-vis PCS.

III. A PORTION OF THE SPECTRUM AT ISSUE IN THIS NPRM SHOULD BE RESERVED FOR PUBLIC SAFETY USE.

Although market forces can present the most efficient method for determining commercial use of radio spectrum, they cannot always ensure that public safety radio needs are met. Moreover, no competitive bidding methodology can satisfactorily provide additional public safety spectrum. Therefore, if it is determined that the frequencies at issue are appropriate for public safety use, then the Commission should set aside at least a 10 MHz block for exclusive use by public safety entities. Such a set aside will address the mandate in the Appropriations Act that the Commission consider the needs of public safety radio services,²⁷ without significantly affecting the amount of spectrum available for WCS services. In addition, the Commission should consider other areas of demonstrated need and determine whether market forces can adequately address those needs.

It is by no means clear from the language of the Appropriations Act that Congress has required that all 30 MHz of the spectrum be auctioned. Section 309(j) requires licensing through competitive bidding only when competing license applications are filed and commercial services are to be provided.²⁸ Moreover, the *House Report* to the *Budget Act* states specifically that the competitive bidding process is not meant to apply to the licensing of public safety services.²⁹ Therefore, because, the Appropriations Act explicitly requires

²⁷ *Appropriation Act* at § 3001(b)(2).

²⁸ *See* 47 U.S.C. § 309(j).

²⁹ *House Report* at 580 ("The enactment of section 309(j) should not affect the manner in which the Commission issues licenses for virtually all private services, including frequencies utilized by Public Safety Services").

the Commission to consider the needs of public safety radio services, the Commission must have the authority to provide public safety licenses by a means other than auction.

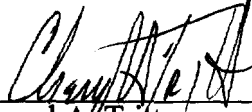
Although a public safety set aside could result in somewhat lower auction revenues, the generation of revenues through spectrum auctions cannot be the Commission's primary factor for determining use of spectrum resources in the public interest. Indeed, Section 309(j) of the Act explicitly forbids consideration of auction revenues in determining whether the public interest will be served by a specific frequency band assignment or set of regulations for a given wireless service.³⁰ The public interest would be served by a specific public safety allocation.

IV. CONCLUSION

For the foregoing reasons Sprint and Sprint PCS respectfully submit that the Commission should ensure that the WCS spectrum is efficiently allocated and utilized by licensing the service in 5 MHz blocks for license areas no larger than BTAs. In addition, the Commission should set aside a minimum of 10 MHz of spectrum for the exclusive use of public safety entities.

³⁰ See 47 U.S.C. 309(j)(7) & (8).

Respectfully submitted,



For Sprint Spectrum L.P. d/b/a Sprint PCS

Jonathan M. Chambers
1801 K Street, N.W.
Suite M-112
Washington, D.C. 20006
(202) 835-3617

Cheryl A. Tritt
James A. Casey
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006
(202) 887-1500

For Sprint Corporation

Jay C. Keithley
1850 M Street, N.W.
Suite 1100
Washington, D.C. 20036
(202) 828-7453

Attorneys for Sprint Spectrum L.P. d/b/a
Sprint PCS and Sprint Corporation

Dated: December 4, 1996

CERTIFICATE OF SERVICE

I, Kimberly E. Thomas, do hereby certify that the foregoing **JOINT COMMENTS OF SPRINT SPECTRUM L.P. d/b/a SPRINT PCS AND SPRINT CORPORATION** was mailed on this 4th day of December, via first class U.S. mail to the following:

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Michele Farquhar, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W. - Room 5002
Washington, D.C. 20554

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W. - Room 814
Washington, D.C. 20554

Roslind Allen, Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., - Room 5002
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W. - Room 802
Washington, D.C. 20554

David Furth, Chief
Commercial Wireless Bureau
Wireless Telecommunications Division
Federal Communications Commission
2025 M Street, N.W. - Room 7002
Washington, D.C. 20554

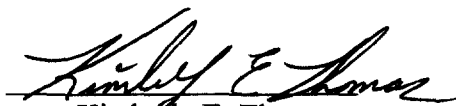
Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W. - Room 832
Washington, D.C. 20554

Tom Mooring
Office of Engineering and Technology
Federal Communications Commission
2000 M Street, N.W. - Room 480
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W. - Room 844
Washington, D.C. 20554

Matthew Moses
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W. - Room 5322
Washington, D.C. 20554

Joshua Roland
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W. - Room 5322
Washington, D.C. 20554


Kimberly E. Thomas